

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 1474 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the Civil Judge?

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JAGATSINH BAPUBHA ZALA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR CL SONI for Applicant(s) : 1,
 MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
 None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/08/2007

ORAL JUDGMENT

1. By way of this petition, under Article 226 of the Constitution of India, the petitioner -

original opponent has prayed for an appropriate Writ, direction and order quashing and setting aside the judgment and order dated 31.05.2007 passed by the learned Additional Sessions Judge, Rajkot in Criminal Revision Application No. 145 of 2006 by which the learned Revisional Court has partly allowed the said Revision Application modifying the order passed by the learned trial Court directing the petitioner to pay maintenance to his wife - original applicant at the rate of Rs.7,000/- per month.

2. Wife of the petitioner submitted an application under Section 125 of the Criminal Procedure Code being Criminal Misc. Application No. 1107 of 2004 before the learned 7th Additional Senior Civil Judge & J.M.F.C, Rajkot and the learned trial Court vide judgment and order dated 26.07.2006 passed an order directing the petitioner to pay maintenance at the rate of Rs.4,000/- per month. Being aggrieved and dissatisfied with the same, the wife of the petitioner preferred Criminal Revision Application No. 145 of 2006 before the learned Additional Sessions Judge, Rajkot and prayed for maintenance at the rate of Rs.10,000/- per month. The learned

Revisional Court considering the pay slip of the petitioner and considering the salary of the petitioner of Rs.13,142/- per month and further considering the agricultural income of the petitioner at the rate of Rs.30,000/- per annum i.e. Rs.2500/- per month, held that the monthly income of the petitioner is Rs.14,200/- and considering the decision of this Court in the case of **Aruna G. Devda v/s. State of Gujarat** reported in 1993(1) GLH 444 partly allowed the said Revision Application and instead of Rs.4,000/- per month fixed maintenance at the rate of Rs.7,000/- per month and directed the petitioner to pay maintenance to the original applicant at the rate of Rs.7,000/- from the date of the original application. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present petition under Article 227 of the Constitution of India.

3. Mr.C.L.Soni, learned Advocate appearing on behalf of the petitioner has submitted that the Revisional Court has not properly appreciated the fact that the petitioner is also required to maintain his parents who are at present residing with the

petitioner. He has also further submitted that the learned Revisional Court has not properly appreciated the fact that the quarter which was allotted to the petitioner is retained by his wife, has put lock and is staying at Rajkot; and the petitioner is required to stay at another place and has to bear the expenditure of rent of Rs.1500/- per month. The aforesaid aspects are not considered by the learned Revisional Court, therefore, it is requested to allow the present petition.

4. Mr.K.T.Dave, learned Additional Public Prosecutor appearing on behalf of respondent No.1 - State has submitted in the facts and circumstances of the case and considering the income of the petitioner at Rs.14,200/- per month, it cannot be said that the Revisional Court has committed any error in awarding maintenance of Rs.7,000/- per month. It is further submitted by him that the Revisional Court has considered the fact that father of the petitioner is getting pension which is not disputed by the petitioner. It is submitted that the Revisional Court has rightly considered the income of the petitioner from agriculture at the rate of Rs.30,000/- per

annum, as the same was finding of the learned trial Court it has not been challenged by the petitioner by way of Revision Application and so far as the agricultural income is concerned, it has become final. Therefore, it is requested to dismiss the present petition.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. It is not in dispute that the monthly income of the petitioner which is evident from the pay slip is Rs.13,142/- per month; an amount of Rs.690 is deducted by way of P.F., deducting an amount of Rs.80 towards professional tax and Rs.700/- towards income tax, the income of the petitioner is considered at Rs.11,700/- and adding agricultural income of Rs.2,500/- per month, same is considered at Rs.14,200/- per month and considering the decision of the this Court in the case of Aruna G.Devda (supra), the Revisional Court has passed an order awarding to pay maintenance at the rate of Rs.7,000/- per month. The submission on behalf of the petitioner that the petitioner has also to bear the burden and incur

expenditure towards his parents is concerned, it is to be noted and as observed by the learned trial Court and which is not disputed by the learned Advocate appearing on behalf of the petitioner that the father of the petitioner is getting pension who was serving as Gram Savek in the State Government. Considering above, it cannot be said that the order passed by the learned Revisional Court is so perverse which requires interference of this Court in exercise of powers under Article 227 of the Constitution of India. There is no jurisdictional error much less than law committed by the learned Revisional Court. Under the circumstances, there is no substance in the present petition, same requires to be dismissed and accordingly it is dismissed.

[M.R.Shah, J.]

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